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No. 92-801

In the Supreme Court of the United States

OCTOBER TERM, 1992

COMMODITIES EXPORT CO., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

DAVID M. COHEN
JOSEPH I. LIEBMAN
MARK S. SOCHACZEWSKY
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the court of appeals' judgment in favor of petitioners moots the jurisdictional issue raised by the petition.

2. Whether the court of appeals correctly determined that the Court of International Trade possesses exclusive jurisdiction over a suit by the United States to recover on petitioner's warehouse bond.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A14) is reported at 972 F.2d 1266. The opinions of the United States Court of International Trade (Pet. App. A16-A29, A30-A41) are reported at 733 F. Supp. 109 and 755 F. Supp. 418.[1]

[1] A related case originally brought before the United States District Court for the Eastern District of Michigan was ordered transferred to the Court of International Trade. See *Commodities Export Co.* v. *United States Customs Service*, 957 F.2d 223 (6th Cir.), cert. denied, 113 S. Ct. 96 (1992).

JURISDICTION

The judgment of the court of appeals (Pet. App. A15) was entered on August 11, 1992. The petition for a writ of certiorari was filed on November 6, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner operates a "duty-free" store located in Detroit, Michigan, directly adjacent to the Canadian border. Duty-free stores avoid paying duties and taxes normally due at importation or before sale of goods by storing otherwise dutiable or taxable goods in bonded warehouses. See Pet. App. A4, A19. Infractions of customs laws or regulations constitute defaults under the warehouse bond, and may give rise to assessments of "liquidated damages" under the terms of the warehouse bond. See, *e.g.*, *id.* at A19-A20. The United States Customs Service instituted this action before the United States Court of International Trade (CIT) to recover liquidated damages assessed against petitioner and its surety under petitioner's warehouse bond. The assessments were based on a "spot check" of petitioner's warehouse conducted by the Customs Service on February 22, 1983. *Id.* at A20-A21.

The CIT entered judgment on a jury verdict against the defendants for $6,024.69 plus interest. Pet. App. A42-A43. On appeal, petitioner challenged both the CIT's jurisdiction and its holding that the applicable statute of limitations did not bar the government's suit. The court of appeals confirmed CIT's exclusive jurisdiction over the case, but held that the relevant statute of limitations had expired prior to commencement of the action. It therefore reversed the trial court's judgment in favor of the United States. *Id.* at A14.

ARGUMENT

1. The court of appeals' holding—which the United States does not contest here—that the statute of limitations bars this action against petitioner moots petitioner's claim that the CIT's jurisdiction was not properly invoked. The judgment below prevents the United States from maintaining any action against petitioner to collect liquidated damages on the particular assessments at issue in this case. A decision by this Court could thereforc afford petitioner no further relief with respect to the subject matter of the case.

This Court has repeatedly made clear that even where Congress has granted parties the right to appeal to this Court, the Court ordinarily will not entertain such an appeal from a party that has obtained a judgment in its favor in the court below. See, *e.g.*, *Deposit Guaranty Nat'l Bank* v. *Roper*, 445 U.S. 326, 333 (1980); *Public Service Commission* v. *Brashear Freight Lines, Inc.*, 306 U.S. 204, 206 (1939); *New York Telephone Co.* v. *Maltbie*, 291 U.S. 645 (1934); *Gunn* v. *University Committee To End the War*, 399 U.S. 383, 390 n.5 (1970).[2] In the only decided case of which we are aware that presented the same issue in the context of a petition for a writ of certiorari, the Court applied the same principle in dismissing the writ, after full briefing and argument, as improvidently granted. *California* v. *Rooney*, 483 U.S. 307, 311-314 (1987). See also R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* 46 & n.12 (6th ed. 1986).

Remarkably, the petition scarcely addresses this basic jurisdictional issue. Petitioner's glancing acknowledgment of the case-or-controversy requirement, Pet. 5-6,

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[2] This case does not involve exceptional factual or statutory circumstances analogous to those present in *INS* v. *Chadha*, 462 U.S. 919, 929-931 (1983).

suggests that the issue of the CIT's jurisdiction might arise in other cases between the parties. True or not, that is no reason for the Court (which is constitutionally barred from rendering advisory opinions) to address the issue in this case.[3] If the question of jurisdiction arises in a later case which results in a decision adverse to petitioners, they will of course be free to ask this Court to review the issue at that time.[4] In *this* case, a decision by this Court that the court of appeals misconstrued the CIT's jurisdiction would lead to nothing more than an affirmance, on different grounds, of the court of appeals' judgment in favor of petitioner.

2. Even if the issue were not moot, the decision would not merit review because the court of appeals' decision upholding the CIT's jurisdiction was correct.

Congress has granted the CIT exclusive jurisdiction over "any civil action which arises out of an import transaction and which is commenced by the United

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[3] Although we find the proposition dubious, we think it unnecessary for the Court to consider whether the potential effect of an unfavorable jurisdictional ruling on later cases involving an otherwise successful petitioner would be sufficient to allow the Court to assert jurisdiction, in an appropriate case, within the limits of Article III of the Constitution. See, *e.g.*, *Deposit Guaranty Nat'l Bank*, 445 U.S. at 333-334. This case presents no feature which would justify making an exception to the Court's normal prudential rule.

[4] It is true that, as we pointed out in our brief in opposition in *Commodities Export Co.* v. *United States Customs Service*, *supra*, the specific holdings involved in the Federal Circuit's decision on jurisdiction in this case will presumably be given preclusive effect in later litigation between the parties. See 91-2063 Gov't Br. in Opp. at 7 n.7. But that result will merely prevent relitigation of the issue in the lower courts; it will not affect petitioner's ability to seek review in this Court if and when the lower courts render a judgment adverse to petitioner. Cf. *California* v. *Rooney*, 483 U.S. at 312-313 & n.2 ("the law-of-the-case doctrine provides no justification for our granting review at this stage").

States * * * to recover upon a bond relating to the importation of merchandise." 28 U.S.C. 1582(2). In holding that petitioner's activities in bringing merchandise into the United States for storage in its bonded warehouse constituted "import transaction[s]" and "importation" for purposes of the statute, Pet. App. A7-A9, the court of appeals properly interpreted the statutory language in accordance with its ordinary meaning. As the court pointed out, *id.* at A8-A9, the terms of petitioner's bond deal with the "documentation and manipulation of imported merchandise in [petitioner's] warehouse." They also "ensur[e] payment of duties on imported merchandise in the event those duties become payable"—as, for example, in this case. *Ibid.* Moreover, the court of appeals' interpretation is consistent with the language of this Court's prior decisions. See *R.J. Reynolds Tobacco Co.* v. *Durham County*, 479 U.S. 130, 134 n.3 (1986) ("[g]oods may remain in a customs-bonded warehouse for up to five years from the date of importation without payment of customs duties"); *Xerox Corp.* v. *County of Harris*, 459 U.S. 145, 150 (1982) ("Congress established a comprehensive customs system which includes provisions for Government-supervised bonded warehouses where imports may be stored duty free for prescribed periods.").[5]

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[5] As the court of appeals correctly observed, Pet. App. A7-A8, *Stone & Downer Co.* v. *United States*, 19 C.C.P.A. 259, 264 (1931), cert. denied, 287 U.S. 619 (1932), is not to the contrary. *Stone & Downer* dealt with the time at which goods are considered "imported" for purposes of assessing duties against them. Here, in contrast, the issue is what sort of cases should come within the CIT's broad grant of exclusive jurisdiction over import-related cases. See Pet. App. A8. Of course, even if the decisions were inconsistent, a decision by the Federal Circuit superseding a decision of its predecessor would not present a conflict requiring resolution by this Court.

Thus, the court of appeals correctly held that the assessments at issue here "aris[e] out of an import transaction" and involve "a bond relating to the importation of merchandise." That determination would warrant no further review, even if the question were properly presented in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

DAVID M. COHEN
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MARK S. SOCHACZEWSKY
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